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Legend:

Corporation =

Taxpayer =

State =

Outdoor Advertising Displays =

Rental Agreement =

a =

b =

c =

Type A =

Type B =

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This letter responds to your March 15, 2013 letter, and subsequent correspondence, requesting certain rulings in connection with Taxpayer's intent to elect to be taxed as a real estate investment trust (REIT) under section 856 of the Internal Revenue Code (Code).

Facts:

Taxpayer, a State corporation, owns and leases Outdoor Advertising Displays and rents space on such displays to tenants. Taxpayer has represented that it intends to make an election under section 1033(g)(3) of the Code and the regulations thereunder for Taxpayer's first taxable year as a REIT to treat its Outdoor Advertising Displays as real property for purposes of chapter 1 of the Code. The Outdoor Advertising Displays for which Taxpayer has made a valid election under section 1033(g)(3) are referred to as "Qualified Outdoor Advertising Displays."

Taxpayer will jointly elect with some of its corporate subsidiaries to treat such subsidiaries as taxable REIT subsidiaries (TRSs) within the meaning of section 856(l), effective on the first day of Taxpayer's first taxable year as a REIT. Taxpayer expects that any other of its corporate subsidiaries would be treated as qualified REIT subsidiaries (QRSs) within the meaning of section 856(i)(2).

Use Agreements and Rental Agreements

For those Outdoor Advertising Displays not owned by Taxpayer or located on land or other real property not owned by Taxpayer, Taxpayer will have the right to use each Outdoor Advertising Display or the land or other real property on which it is located pursuant to a lease agreement, license agreement, permit or easement (Use Agreements). Use Agreements generally convey the right to use a specified piece of land or other real property to construct, install and maintain Outdoor Advertising Displays, or to use existing Outdoor Advertising Displays, to lease or sublease space on Outdoor Advertising Displays to tenants. Use Agreements generally have terms of at least a years.

Taxpayer enters into Rental Agreements granting tenants the right to place their advertising copy on Outdoor Advertising Displays. Some Outdoor Advertising Displays have a Type A or Type B screen, allowing for multiple Rental Agreements with respect to those Outdoor Advertising Displays to be in place at one time.

Rental Agreements generally provide tenants the right to display an advertisement on a specific Outdoor Advertising Display for a term of b to c weeks, in exchange for a fixed payment (generally payable monthly). When Taxpayer has space on Outdoor Advertising Displays that is not otherwise leased to long-term tenants, Taxpayer occasionally enters into shorter-term contracts (less than b weeks) particularly when the economic environment is uncertain. Taxpayer represents that the portion of its revenue attributable to these short-term contracts recently has been approximately 3 percent of its total revenues from Outdoor Advertising Displays. Taxpayer represents that the average fair market value of the personal property leased to a tenant in connection with the lease of an Outdoor Advertising Display will not exceed 15 percent of the aggregate fair market value of both the real property (taking the section 1033(g)(3) election into account) and personal property attributable to the Outdoor Advertising Display.

Services

In connection with each Rental Agreement, Taxpayer will only provide the following services: leasing activities, the provision of utilities, security, and routine maintenance (the "Services"). Taxpayer represents the Services are customarily furnished by lessors of space on Outdoor Advertising Displays in the respective markets in which Taxpayer will lease space on Outdoor Advertising Displays.

If a Rental Agreement requires the performance of services other than the Services ("Other Services"), any such Other Services will either be performed by a TRS of Taxpayer or by an independent contractor from whom Taxpayer derives no income. A TRS will use its own employees (including shared personnel, as described below) and bear all of its own costs, including salaries and the cost of equipment and supplies (whether incurred directly or pursuant to cost-sharing arrangements) to provide Other Services to tenants of Taxpayer. A TRS may rent space from Taxpayer in order to carry out its operations, and will make no payment to Taxpayer other than its rental payments for the space. When Taxpayer collects all amounts due from the tenant as compensation for both the use of the space and the Other Services, Taxpayer will compensate its TRSs for the provision of any Other Services on an arm's-length basis.

Taxpayer may enter into an employee sharing agreement, a space sharing agreement and/or an equipment sharing agreement (collectively "cost-sharing arrangements") with its TRSs. Reimbursements for shared personnel, equipment and space will be at cost and will be deducted or capitalized, as applicable, by the party bearing such costs under the cost-sharing arrangement. The reimbursed party under a cost-sharing arrangement will not deduct or capitalize reimbursed costs of shared

personnel, equipment or space. Neither Taxpayer nor any TRS will be in the business of receiving compensation for services or the use of property of the type that will be reimbursed pursuant to a cost-sharing arrangement.

GAAP Intangibles

Taxpayer has intangibles created under GAAP that arose from acquisitions of corporations whose businesses included the ownership and leasing of Outdoor Advertising Displays. These GAAP Intangibles include GAAP “identifiable intangibles” and GAAP goodwill.

Taxpayer represents that GAAP methodology requires Taxpayer to allocate its purchase price in the acquisition of an Outdoor Advertising Display business as follows. First, a portion of the purchase price is allocated to working capital and cash items. Second, a portion of the purchase price is allocated to property, plant, and equipment (in Taxpayer’s case, the Outdoor Advertising Displays) up to, but not in excess of, the replacement cost (less depreciation) of the Outdoor Advertising Displays purchased. Third, a portion of the purchase price is allocated to “identifiable intangibles,” defined by GAAP as intangibles that arise from contractual or legal rights associated with physical assets (in Taxpayer’s case, the Outdoor Advertising Displays), regardless of whether such rights are transferrable or separable from the underlying physical assets. Taxpayer’s GAAP “identifiable intangibles” are derived from leases, licenses, zoning permits and easements relating to the use of Outdoor Advertising Displays and any owned land or other real property to which an Outdoor Advertising Display is affixed. Taxpayer has not recorded workforce in place, customer lists, trademarks or other such assets as identifiable intangibles, but represents that it would have been required to do so if any such intangibles had been a material asset of Taxpayer.

Finally, under the GAAP methodology, any residual purchase price is then allocated to “goodwill” as defined under GAAP. Taxpayer represents that the GAAP goodwill is effectively the premium that Taxpayer paid for the future rent generating capacity of the Outdoor Advertising Displays acquired.

Taxpayer represents that its GAAP Intangibles have absolutely no value separate and apart from the value of the Outdoor Advertising Display assets. Taxpayer further represents that if any of its stock acquisitions had been structured as taxable asset acquisitions, the GAAP Intangibles would have been included in the tax basis of the Outdoor Advertising Displays and other real property interests for federal income tax purposes, and would not have been separately amortizable intangible assets. Thus, Taxpayer represents that its GAAP goodwill results solely from the GAAP methodology limiting the allocation of purchase price to the replacement cost (less depreciation), rather than the fair market value, of the Outdoor Advertising Display assets.

TRS Loans

Taxpayer may make loans to domestic and foreign TRSs (Foreign TRSs). Certain of the loans will be secured, in whole or in part, by real property of the applicable TRS. With respect to any loans between Taxpayer and a domestic or Foreign TRS that are secured, in whole or in part, by interests in real property located outside the U.S., the applicable security interest will be comparable to a mortgage under U.S. state law, including the mortgage right to foreclose on the collateral.

Income from Foreign Subsidiaries

Taxpayer currently owns and intends to acquire one or more foreign entities that are classified as associations pursuant to section 301.7701-3 of the Procedure and Administration Regulations, and for which elections will be made to be treated as TRSs pursuant to section 856(l)(1)(B). Such foreign subsidiaries are controlled foreign corporations under section 957(a) ("CFCs") with respect to which Taxpayer is a United States shareholder under section 951(b) ("United States Shareholder").

As a result of being a United States Shareholder with respect to CFCs, Taxpayer is required by section 951(a)(1)(A)(i) to include in its gross income its pro rata share of the subpart F income, as defined in section 952(a), of any such CFCs. Taxpayer expects to report section 951(a)(1)(A) inclusions attributable to one or more CFC's foreign personal holding company income ("FPHCI"), net of allocable expenses, which is passive rental income, interest, dividends and gain from the sale of property that gives rise to income such as dividends, interest and rental income (the "Subpart F Inclusions").

In addition, Taxpayer may occasionally pledge shares of one of more CFCs or cause one or more CFCs to pledge assets, in each case as collateral to secure certain debt of Taxpayer that was incurred to finance the acquisition, improvement, or development of certain of its real estate assets. As a result, Taxpayer will be required by Section 951(a)(1)(B) to include in its gross income amounts determined under section 956 for the relevant taxable year (the "Section 956 Inclusions").

Purging Distribution

Pursuant to the REIT Election, Taxpayer intends to declare a dividend within the last three months of its first taxable year as a REIT (the "First REIT Taxable Year") in an amount equal to the earnings and profits that were, or will be, accumulated by Taxpayer for all taxable periods ending prior to the First REIT Taxable Year, and distribute such amount to its shareholders no later than January 31st of the following year (the "Purging Distribution"). Taxpayer intends to make the Purging Distribution in a combination of cash and shares. Taxpayer may also make other cash and stock distributions in the two years following the effective date of the REIT Election, (the "Other Distributions" and

together with the Purging Distributions, the “REIT Distributions”) in order to comply with the distribution requirement of section 857(a)(1).

When Taxpayer makes a REIT Distribution, it intends to allow each shareholder to elect to receive the shareholder’s distribution in either cash or Taxpayer shares of equivalent value, subject to a limitation on the amount of cash to be distributed in the aggregate to all shareholders (the “Cash Limitation”). Although Taxpayer has not yet determined the amount of the Cash Limitation, it will in each case not be less than 20% of the applicable REIT Distribution declaration (without regard to any cash that may be paid in lieu of fractional shares). If too many shareholders elect to receive cash in a REIT Distribution (such that total cash elections exceed the Cash Limitation), each shareholder electing to receive cash will receive a pro rata amount of the Cash Limitation, corresponding to the shareholder’s respective entitlement under the REIT Distribution declaration. In no event will any shareholder electing to receive cash receive less than 20% of the shareholder’s entire entitlement under the REIT Distribution declaration in cash.

To the extent a shareholder is to receive Taxpayer shares in a REIT Distribution, the total number of Taxpayer shares to be received by such shareholder will be determined, over a period of up to two weeks ending as close as practicable to the payment date of the REIT Distribution, based on a formula using market prices and designed to equate the value of the number of Taxpayer shares to be received with the amount of cash that could be received instead.

Law and Analysis:

Issue 1: Use Agreements

Section 856(c)(4)(A) provides that at the close of each quarter of its tax year, at least 75 percent of the value of a REIT’s total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(5)(B) provides that the term “real estate assets,” for purposes of Section 856, means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs that meet the requirements of sections 856 through 859.

Section 856(c)(5)(C) provides that the term “interests in real property” includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

Section 1.856-3(b)(1) of the Income Tax Regulations provides that the term real estate assets means real property, interests in mortgages on real property (including

interests in mortgages on leaseholds of land or improvements thereon), and shares in other qualified REITs. Section 1.856-3(c) provides that the term interests in real property includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon. The term also includes timeshare interests that represent undivided fractional fee interests, or undivided leasehold interests, in real property, and that entitle the holders of the interests to the use and enjoyment of the property for a specified period of time each year. Local law definitions will not be controlling for purposes of determining the meaning of “real property” for purposes of section 856 and the regulations thereunder.

Rev. Rul. 68-291, 1968-1 C.B. 351, clarifying Rev. Rul. 59-121, 1959-1 C.B. 212, provides generally that the consideration received for the granting of an easement constitutes the proceeds from the sale of an interest in real property and should be applied as a reduction of the cost or other basis of the portion of the land subject to the easement. See also Rev. Rul. 54-575, 1954-2 C.B. 145. An easement is an interest in real property. Granting such an easement deprives the land owner subject to the easement of practically all beneficial interest in the portion of the land covered by the easement, except that the grantor retains only the mere legal title to the property.

Similarly, permits such as those included in the Use Agreements described above are included in the term “interests in real property” for purposes of section 1.856-3(c). Although permits do not convey fee ownership in the real property to which they relate, they are similar to leases in that they authorize the holders to use the applicable real property for similar specified terms. Licenses to use Outdoor Advertising Displays also provide Taxpayer the right to use the Outdoor Advertising Displays in a manner analogous to leases.

Following an election under section 1033(g)(3), Taxpayer’s Qualified Outdoor Advertising Displays will be treated as real property for purposes of Chapter 1 of the Code. Each Use Agreement is either a lease or provides Taxpayer with the right to use specified Outdoor Advertising Displays, or land or other real property on which Outdoor Advertising Displays are located, in the same manner as a lease. The Use Agreements with respect to the Qualified Outdoor Advertising Displays, which include leases, licenses, easements and permits, will therefore constitute “real property” for purposes of section 856(c)(2)(C) and section 856(c)(3)(A), and “real estate assets” for purposes of sections 856(c)(4)(A) and (5)(B).

Issue 2: Payments under the Rental Agreements:

Section 856(c)(2) provides that at least 95 percent of a REIT’s gross income must be derived from, among other sources, rents from real property.

Section 856(c)(3) provides that at least 75 percent of a REIT’s gross income must be derived from, among other sources, rents from real property.

Section 856(d)(1) provides that “rents from real property” include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property; (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 1.856-4(b)(1) provides that, for purposes of sections 856(c)(2) and (c)(3), the term “rents from real property” includes charges for services customarily furnished or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. In particular geographic areas where it is customary to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of those utilities to tenants in the buildings will be considered a customary service.

Section 1.856-4(b)(5)(ii) provides that the trustees or directors of a REIT are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the trust itself.

Section 856(d)(2)(C) provides that any impermissible tenant service income is excluded from the definition of “rents from real property”. Section 856(d)(7)(A) of the Code defines “impermissible tenant service income” to mean, with respect to any real or personal property, any amount received or accrued directly or indirectly by the REIT for services furnished or rendered by the REIT to tenants at the property, or for managing or operating the property.

Section 856(d)(7)(B) provides that if the amount of impermissible tenant service income exceeds one percent of all amounts received or accrued during the tax year directly or indirectly by the REIT with respect to a property, the impermissible tenant service income of the REIT will include all of the amounts received or accrued with respect to such property. Section 856(d)(7)(D) provides that the amounts treated as received by a REIT for any impermissible tenant service shall not be less than 150 percent of the direct cost of the REIT in furnishing or rendering the service.

Section 856(d)(7)(C) provides certain exclusions from impermissible tenant service income. Section 856(d)(7)(C) provides that for purposes of section 856(d)(7)(A), services furnished or rendered, or management or operation provided, through an independent contractor from whom the REIT does not derive or receive any

income or through a TRS of such REIT shall not be treated as furnished, rendered, or provided by the REIT, and there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in Section 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, and the collection of trash are not considered as services rendered to the occupant.

In Rev. Rul. 2002-38, 2002-2 C.B. 4, a REIT paid its TRS at an arm's-length rate to provide non-customary services to tenants. The REIT did not separately state charges to tenants for the services. Thus, a portion of the amounts received by the REIT from tenants represents an amount received for services provided by the TRS. TRS employees performed all of the services and TRS paid all of the costs of providing the services. The TRS also rented space from the REIT for carrying out its services to tenants. The revenue ruling concludes that the services provided to the REIT's tenants were considered to be rendered by the TRS, rather than the REIT, for purposes of section 856(c)(7)(i). Accordingly, the services did not give rise to impermissible tenant service income and did not cause any portion of the rents received by the REIT to fail to qualify as "rents from real property" under section 856(d).

If Taxpayer elects under section 1033(g)(3) to treat the Outdoor Advertising Displays as real property for purposes of chapter 1 of the Code and if such election is proper under section 1033(g)(3), then amounts received by Taxpayer under its contracts with tenants as compensation for the rental of space on Qualified Outdoor Advertising Displays to display advertising copy will constitute amounts received for the use of real property and, therefore, rents from real property.

Taxpayer does enter into a limited number of short-term contracts; however, such short-term contracts comprise a small percentage of Taxpayer's overall revenue.

Moreover, Taxpayer's short-term contracts are for the use of the advertising space and are not contracts for the provision of non-customary services. With respect to Taxpayer's Outdoor Advertising Displays with Type A and Type B screens, tenants share the Outdoor Advertising Displays with other tenants and any particular tenant's advertising copy is displayed for only certain intervals of time in a rotation with other tenants. However, these facts do not change the character of the income as rents from real property because the income from renting space on Outdoor Advertising Displays remains passive in nature, and tenants pay for the right to use the Outdoor Advertising Displays for specified intervals of time.

Accordingly, we rule that the income derived by Taxpayer from tenants under its Rental Agreements for the use of advertising space on the Qualified Outdoor Advertising Displays qualifies as "rents from real property" under section 856(d) for purposes of section 856(c).

Taxpayer has represented that the Services that will be provided to Taxpayer's tenants pursuant to Rental Agreements are usual or customary services that are rendered in connection with the operation or maintenance of the Qualified Outdoor Advertising Displays and are not rendered primarily for the convenience of tenants. The Other Services will be provided by an independent contractor from whom Taxpayer does not derive or receive any income or through a TRS compensated by Taxpayer at an arm's length rate for the provision of such services. Although Taxpayer may collect the compensation for the use of space, the Services, and the Other Services provided by a TRS, the Other Services are considered to be rendered by the TRS rather than Taxpayer for purposes of section 856(d)(7)(C)(i).

Accordingly, neither the Services nor the Other Services furnished in connection with Rental Agreements give rise to impermissible tenant service income, and neither will cause any amounts received by Taxpayer from tenants to be treated as other than "rents from real property" under section 856(d).

Issue 3: Reimbursements under a cost-sharing arrangement

In Rev. Rul. 84-138, 1984-2 C.B. 123, a regulated investment company ("RIC") and its wholly-owned subsidiary shared facilities and some personnel. It was agreed that the RIC would pay all the expenses for general and administrative overhead including personnel costs, and the subsidiary would reimburse the RIC for its pro rata share of the expenses on an arm's length basis. The ruling, in distinguishing Jergens Co. v. Commissioner, 40 B.T.A. 868 (1939), states that the RIC was not engaged in the business of receiving compensation for services of the type that were reimbursed. Instead, reimbursements to the RIC from the subsidiary were merely repayments of advances made on behalf of the subsidiary. Accordingly, the ruling holds that the reimbursements were not included in the RIC's gross income under section 61, and, therefore, were not subject to the gross income requirement of section 851(b)(2).

In the present case, the cost-sharing arrangements to be executed between Taxpayer and its TRSs are analogous to the situation in Rev. Rul. 84-138. The Taxpayer and its TRSs intend to enter into cost-sharing arrangements under which reimbursements will be made for shared personnel, equipment and space, at cost. Neither Taxpayer nor the applicable TRS will engage in the business of receiving compensation for services or use of property of the type that will be reimbursed under these arrangements. Accordingly, any amounts received by Taxpayer or a TRS as reimbursements under a cost-sharing arrangement will not be included in the reimbursed party's gross income, including for purposes of section 856(c)(2) and (3) (to the extent Taxpayer is the reimbursed party). Also, neither the Taxpayer nor a TRS will be entitled to a deduction for any expenses that are later reimbursed.

Issue 4: Loans by Taxpayer to a TRS

Section 856(c)(4)(A) provides that at the close of each quarter of the taxable year at least 75 percent of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and government securities.

Section 856(c)(4)(B) provides, in relevant part, that at the end of each quarter of a taxable year, (i) not more than 25 percent of the value of a REIT's total assets may be represented by securities; (ii) not more than 25 percent of the value of its total assets may consist of securities of TRSs (the "25% Value Test"); (iii) not more than 5% percent of the REIT's total assets may be represented by securities of any one issuer; and (iv) a REIT may not hold securities possessing more than 10% of the total voting power or value of the outstanding securities of a single issuer.

Section 856(c)(5)(B) defines the term "real estate assets," in part, to mean real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs. Section 1.856-3(e) provides that the term "securities" does not include "real estate assets" as defined in sections 856 and 1.856-3.

There is nothing in the statute or legislative history to indicate that Congress intended that the definition of securities in section 1.856-3(e) not apply for purposes of the 25% Value Test under section 856(c)(4)(B)(ii). Accordingly, for purposes of the 25% Value Test under section 856(c)(4)(B)(ii), the term "securities" does not include real estate assets as defined in sections 856 and 1.856-3.

Section 856(c)(5)(B) provides that loans secured by real property and held directly or indirectly by a REIT are real estate assets. In the present case, the loans will be held directly by Taxpayer. Therefore, any loan from Taxpayer to a TRS that is secured by real property and qualifies as a real estate asset within the meaning of section 856(c)(5)(B) will be treated as an interest in real property and not a security under section 856(c)(4)(B)(ii).

Issue 5: GAAP Intangibles

Section 1.856-2(d)(3) provides that in determining the investment status of a REIT, the term “total assets” means the gross assets of the REIT determined in accordance with GAAP. Because Taxpayer derived certain intangible assets in accordance with GAAP that are attributable to its acquisitions of Outdoor Advertising Display companies, these intangibles must be analyzed to determine whether they qualify as “real property” for purposes of section 856. In order to qualify as real property for this purpose, Taxpayer’s GAAP Intangibles must be inseparable from and inextricably and compulsorily tied to Taxpayer’s real property assets. Assuming that Taxpayer is eligible for, and properly elects to, treat its Outdoor Advertising Displays as real property under section 1033(g)(3), the outdoor advertising displays are treated as real property for all purposes of Chapter 1 of the Code.

Taxpayer represents that its GAAP “identifiable intangibles” are intangibles that are derived from its leases, licenses, zoning permits and easements relating to the use of Outdoor Advertising Displays and any owned land or other real property to which an Outdoor Advertising Display is affixed. Taxpayer represents that these leases, licenses, zoning permits and easements are inseparable from the Outdoor Advertising Displays to which they relate, and have absolutely no value separate and apart from the value of these assets. Similarly, Taxpayer represents that its GAAP goodwill results solely from the GAAP methodology limiting the allocation of purchase price to the replacement cost (less depreciation) rather than the fair market value of the Outdoor Advertising Display assets. Therefore, Taxpayer represents that its GAAP goodwill is the excess of an Outdoor Advertising Display’s fair market value over its GAAP replacement cost (less depreciation), and is not attributable to any other business or asset, but rather is effectively the premium that Taxpayer paid for the future rent generating capacity of the Outdoor Advertising Display acquired in the applicable acquisition.

In the present case, provided that Taxpayer is eligible for, and properly elects to, treat its Outdoor Advertising Displays as real property under section 1033(g)(3), and based on the Taxpayer’s representation that its “identifiable intangibles” and GAAP goodwill are inseparable from and inextricably and compulsorily tied to Taxpayer’s Outdoor Advertising Displays, we rule that Taxpayer’s GAAP “identifiable intangibles” and GAAP goodwill (as limited to the excess of the fair market value of the Outdoor Advertising Displays acquired over their GAAP replacement cost (less depreciation) as of the time of the acquisition) each qualify as real property, which is a “real estate asset” for purposes of section 856(c)(5)(B).

Issue 6: Subpart F and Section 956 Inclusions

Section 856(c)(2) of the Code requires that at least 95 percent of a REIT's gross income (excluding gross income from prohibited transactions) be derived from dividends, interest, rents from real property, gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1), and certain other sources.

Section 856(c)(5)(J) provides, in relevant part, that to the extent necessary to carry out the purposes of Part II of subchapter M of the Code, the Secretary is authorized to determine, solely for purposes of such part, whether any item of income or gain which otherwise constitutes gross income not qualifying under section 856(c)(2) or (3) may be considered as gross income which qualifies under section 856(c)(2) or (3).

The legislative history for the REIT statutory provisions indicates that the central concern behind the gross income restrictions is that a REIT's gross income should largely be composed of passive income. For example, H.R. Rep. No. 2020, 86th Cong., 2d Sess. 4 (1960) at 6, 1960-2 C.B. 819, at 822-823 states, “[o]ne of the principal purposes of your committee in imposing restrictions on types of income of a qualifying real estate investment trust is to be sure the bulk of its income is from passive income sources and not from the active conduct of a trade or business.”

Subpart F Inclusions

Section 957 defines a CFC as a foreign corporation in which more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or the total value of the stock, is owned by United States Shareholders on any day during the corporation's taxable year. A United States Shareholder is defined in section 951(a) as a United States person who owns 10 percent or more of the total voting power of the foreign corporation. Taxpayer represents that it is a United States Shareholder within the meaning of section 951(b) with respect to certain subsidiaries that are CFCs.

Section 951(a)(1)(A)(i) generally provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during a taxable year, every person who is a United States Shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 defines subpart F income to include foreign base company income, as determined under section 954. Under section 954(a)(1), foreign base company income includes FPHCI, as determined under section 954(c). Section 954(c)(1)(A) defines FPHCI income to include (among other things) dividends, interest, royalties,

rents, and annuities. Section 954(c)(1)(B) also includes gain from the sale or exchange of property which (among other things) gives rise to income described in section 954(c)(1)(A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as FPHCI by reason of section 954(h) or (i) for the taxable year.

Taxpayer has represented that it is a United States Shareholder within the meaning of section 951(b) with respect to certain of its subsidiaries that are CFCs. As Taxpayer's CFCs earn subpart F income attributable to foreign base company income that is FPHCI and such income is generally passive income, treatment of the section 951(a)(1)(A)(i) inclusion attributable to such passive income as qualifying income for purposes of section 856(b)(2) does not interfere with or impede the policy objectives of Congress in enacting the income test under section 856(c)(2). Accordingly, we rule that under section 856(c)(5)(J)(ii), Subpart F Inclusions attributable to the FPHCI earned by Taxpayer's CFCs are qualifying income for purposes of section 856(c)(2).

Section 956 Inclusions

Section 951(a)(1)(B) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during a taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the amount determined under section 956 with respect to the shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

Section 956(a) provides that in the case of a CFC, the amount determined under section 956 with respect to any United States shareholder for any taxable year is the lesser of -- (1) the excess (if any) of-- (A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the CFC as of the close of each quarter of such taxable year, over (B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or (2) such shareholder's pro rata share of the applicable earnings of such CFC. The amount taken into account in the preceding sentence under (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

Section 1.956-2(c)(1) provides that except as provided in section 1.956-2(c)(4), any obligation (as defined in section 1.956-2(d)(2)) of a United States person (as defined in section 957) with respect to which a CFC is a pledgor or guarantor shall be considered for purposes of section 956(a) to be United States property held by such CFC. Section 1.956-2(c)(2) provides that if the assets of a CFC serve at any time, even though indirectly, as security for the performance of an obligation of a United States person, then, the CFC will be considered a pledgor or guarantor of that obligation.

Taxpayer has represented that assets of one of its CFCs have been pledged as collateral for certain debt of Taxpayer that was incurred to finance Taxpayer's acquisition of real estate assets. This pledge has caused Taxpayer to recognize a Section 956 Inclusion. The facts and representations in this case indicate that the Section 956 Inclusion occurred as a result of a debt of Taxpayer's that arose in connection with the acquisition of real estate assets. This has a close nexus to Taxpayer's business of investing in real property assets. The Section 956 Inclusion recognized in connection with the production of otherwise qualifying income is treated as qualified income for purposes of section 856(c)(2) to the extent that the underlying income so qualifies. Accordingly, we rule that that under section 856(c)(5)(J)(ii), to the extent Taxpayer recognizes a Section 956 Inclusion on the pledge of the assets of a CFC to secure a debt of Taxpayer that is used to finance the acquisition of real estate assets from which income is derived that qualifies under section 856(c)(2), there is a sufficient nexus to treat the Section 956 Inclusion as qualifying income for purposes of section 856(c)(2).

Issue 7: REIT Distribution

Section 305(a) provides that, except as otherwise provided in section 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

Section 305(b)(1) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock or in property.

Section 1.305-1(b)(2) provides that where a corporation which regularly distributes its earnings and profits, such as a RIC, declares a dividend pursuant to which the shareholders may elect to receive either money or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of money that could have been received instead.

Section 857(a)(2) provides, in part, that, as of the close of the taxable year, a REIT must not have any earnings or profits accumulated in any non-REIT year. The term "non-REIT year" means any taxable year to which the provisions of Part II of subchapter M did not apply with respect to the entity.

Section 857(b)(9) provides that any dividend declared by a REIT in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed to have been received by each shareholder on December 31 of such calendar year, and to have been paid by the REIT

on December 31 of such calendar year (or, if earlier, as provided in section 858). The preceding sentence applies only if such dividend is actually paid by the REIT during January of the following calendar year.

Section 857(d)(3) provides that any distribution that is made in order to comply with the requirements of section 857(a)(2)(B) shall be treated for purposes of section 857(d)(3) and section 857(a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and to the extent treated under section 857(d)(3)(A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of section 857(b)(2)(B) and section 858.

The distribution of cash and stock by Taxpayer to its shareholders (determined at the election of each shareholder, subject to the Cash Limitation) to effect a purge of all of Taxpayer's earnings and profits accumulated in taxable years prior to the First REIT Taxable Year, as well as similarly structured cash and stock distributions in its first two taxable years as a REIT, will be treated as distributions of property with respect to Taxpayer's stock to which sections 301 and 857(a)(2) apply by reason of section 305(b). Any and all of the cash and stock distributed as part of a REIT Distribution with respect to the First REIT Taxable Year will first reduce Taxpayer's earnings and profits accumulated in any non-REIT year pursuant to section 857(d)(3). The amount of any distribution of stock received by any shareholder as part of a REIT Distribution will be considered equal to the amount of cash that could have been received instead.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code, and no opinion is expressed with regard to whether Taxpayer is eligible to make an election under section 1033(g)(3) with respect to any of the Outdoor Advertising Displays. We also do not rule on whether the amounts paid to the REIT from the TRS as rents clearly reflect income for purposes of section 857(b)(7)(B). Further, no opinion is expressed regarding whether the value that Taxpayer allocated to GAAP identifiable intangibles was properly determined or whether Taxpayer's GAAP goodwill reflects solely, and is limited to, the excess of the fair market value of the Outdoor Advertising Displays acquired over their GAAP replacement cost (less depreciation) as of the time of their acquisition, or rather whether some of the value that Taxpayer has ascribed to its GAAP identifiable intangibles or GAAP goodwill is properly attributable to workforce in place, customer lists, trademarks, or other intangibles that would not, in the opinion of the Service, qualify as real property for purposes of section 856.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jonathan D. Silver
Jonathan D. Silver
Assistant Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)